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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,844

11/21/2005

Enzo Ferrarin

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1954

116 7590 05/28/2008

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EXAMINER

NICHOLS II, ROBERT K

ART UNIT

PAPER NUMBER

4133

MAIL DATE

DELIVERY MODE

05/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/532,844	<b>Applicant(s)</b> FERRARIN, ENZO	
	<b>Examiner</b> ROBERT K. NICHOLS II	<b>Art Unit</b> 4133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>04/27/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This office action is responsive to the (preliminary) amendment filed on 11/21/2005. As directed by the amendment: claims 8 and 13 have been amended. However, previously presented claims 14 and 15 have not been indicated to be cancelled in the preliminary amendment. For examination purposes, claims 14 and 15 are being treated as canceled claims. Thus, claims 1-13 are presently pending in this application.

### **Claim Status**

Claims 1-13 are pending in which claim 1 is in independent form. Claims 1-13 are rejected under 35 U.S.C. 103(a).

### ***Claim Objections***

Claims 1-13 are objected to because of the following informalities: The examiner notes that the use of reference numerals in the claims is not improper. However, reference numerals cannot be used as a substitute for clear recitation of structure. The examiner requests that the applicant delete all reference numerals to avoid confusion. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are generally narrative and indefinite, failing to conform with current U.S. practice. The claims are written as run on sentences without clear recitation of structure. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Appropriate correction is required.

Claims 4, is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4, lines 3-5 recites "has irregular shape, obtained by joining a lower part thereof, whose cross section is roughly elliptical, very flattend and nearly rectangular, with an upper portion thereof, with circular cross section". This renders the claim indefinite because the structural relationship of the various portions is unclear.

Claims 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7, lines 3-6 recites "has irregular shape, obtained by joining a lower portion thereof, whose cross section is roughly elliptical, very flattened and nearly rectangular, with an upper portion thereof, with square cross section" This renders the claim indefinite because the structural relationship of the various portions is unclear.

Claims 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10, lines 3-6 recites "has irregular shape, obtained by joining a lower portion thereof, whose cross section is roughly elliptical, very flattened and nearly rectangular, with an upper portion thereof, with elliptical cross section" This renders the claim indefinite because the structural relationship of the various portions is unclear.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1- 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

**Ballin (3,297,207) in view of Prestele (US 5,316,186).**

Regarding claims 1 and 2, Ballin discloses a container for substances including a deformable hollow body 20, within which is positioned the substance 26 capable of flowing, the container is provided with an entry and exit conduit or nipple 22 wherein at the conduit end lies an exit opening 27, a closure element or screw cap is able to be coupled with the entry and exit conduit 22 to prevent the outflow of the substance capable of flowing.

Additionally, Ballin discloses a thruster organ or follower 30 arranged without constraints in the hollow body 20, being able to slide under a thrusting action exerted from the container exterior, and positioned in the hollow body 20 in such a way that the substance is capable of flowing in the space between the entry and exit opening 27 and the thruster organ 30 (column 2, lines 16-32).

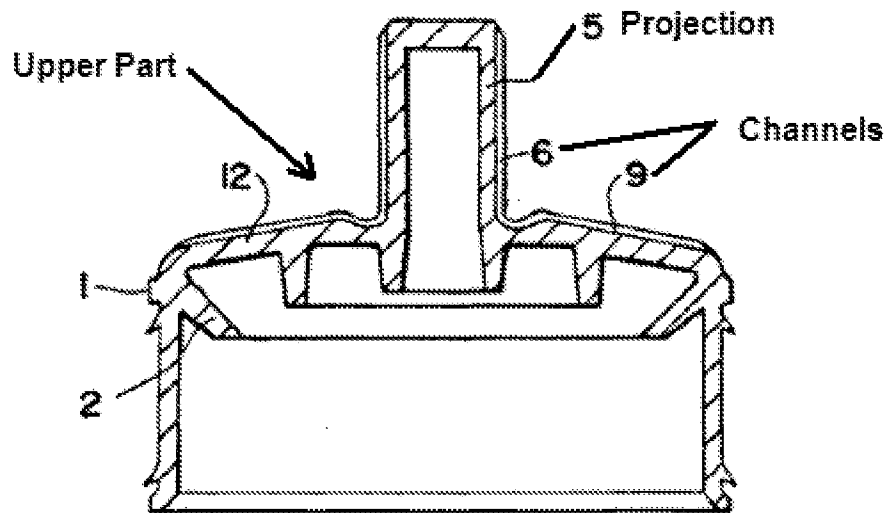
Furthermore, Ballin discloses the thruster organ 30 including an upper part 31, is in contact with the overlying substance capable of flowing and has its maximum cross section equal to that of the hollow body 20 (column 2, lines 45-51 and column 3, lines 5-17).

Additionally, Ballin discloses a projection 32 which extends from the upper part 31 in the direction of the entry and exit opening 27. The projection 10 further enters the entry and exit opening 27 to thrust out any additional residue capable (see figure 6 and column 2, lines 45-49).

However, Ballin fails to disclose a thruster organ wherein there are small open channels positioned on the surface of the upper part 31 and extend along the surface of the projection 10.

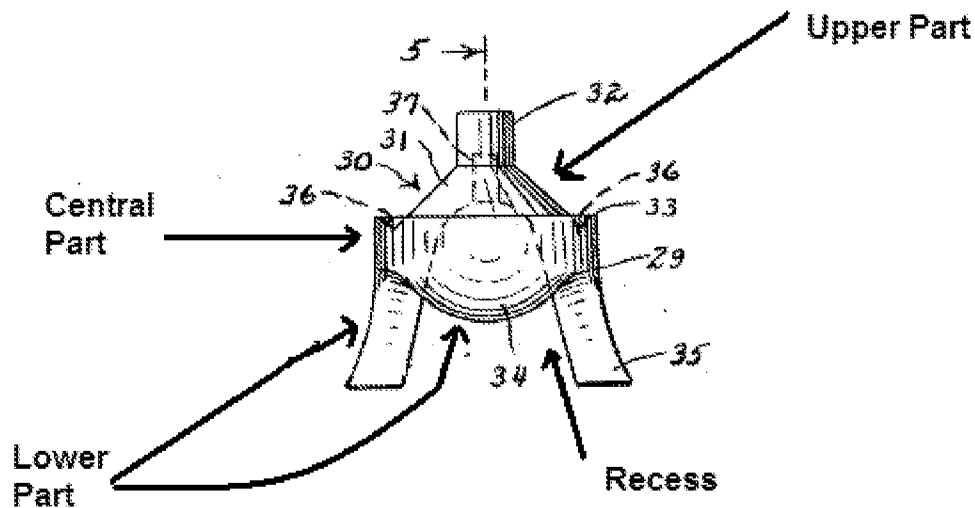
Prestele teaches a container having thruster organ or plunger consisting of an upper part wherein there are small open channels or grooves 9 on the surface and extend along the surface of the projection or journal 5 to allow expressing of the material remaining between the plunger and the end wall of the cartridge body(see marked up figure 3a, column 2, lines 16-34 and column 3, lines 61-65).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided channels on the surface of the upper part of the Ballin thruster that extend along the projection of the Ballin thruster organ as taught by Prestele, in order to allow expressing of any residual material between the thruster and the end wall of the cartridge body.



**Prestele Marked-Up Figure 3a**

Regarding claim 3, Ballin discloses a thruster organ 30 having a central part with constant cross section equal to that of the hollow body, having a band or lip 33 positioned thereon, where the band 33 is able to scrape on the inner surface of the hollow body 20 during sliding of the thrust organ 30 (see marked-up figure 2 and column 2, lines 49-56).



**Ballin Marked-Up Figure 2**

Regarding claims 4, 6, 7, 9, 10, and 12 Ballin discloses a thruster organ 30 wherein the upper part 31 has a cone frustum shape, the central part has a cylindrical shape with a circular cross section and the lower portion has an irregular hemispheric or elliptical shape (see figures 4, marked up figure 2 and column 2, lines 45-49).

However the device of the combination of Ballin and Prestele fails to show that the central part has a parallelepiped shape.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have constructed the central part of the combination device of Ballin and Prestele of a shape according to the tube geometry to allow the thruster organ to snugly engage the interior wall of the hollow body to permit virtually complete



discharge of the fluid, since it has been held to be within the general skill of a worker in the art to select a known shape for a plunger, as a matter of obvious design choice, absent persuasive evidence that the particular shape is significant. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Regarding claims 5, 8 11, Ballin discloses a thruster organ 30 wherein the lower part has a contoured recess (see marked-up figure 2).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Marraffino (US 2,789,731), Pettengill (US 5,020,694), Schultz (US 3,827,607) and Antal Sr. (US 2004/0195273) show other dispensing devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT K. NICHOLS II whose telephone number is (571)270-5312. The examiner can normally be reached on Mon-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Coby can be reached on 571-272-4017. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert K Nichols II/  
Examiner, Art Unit 4133

05/23/2008

/Frantz Coby/  
Supervisory Patent Examiner  
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